No. 1059

Supreme Court of the United States

OCTOBER TERM, 1946

FRED Y. OYAMA and KAJIRO OYAMA,

Petitioners,

v.

STATE OF CALIFORNIA.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

BRIEF OF AMERICAN JEWISH CONGRESS, AS *AMICUS CURIAE*, IN SUPPORT OF PETITION

AMERICAN JEWISH CONGRESS,
Amicus Curiae.

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March 1947.

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BRIEF OF AMERICAN JEWISH CONGRESS, AS *AMICUS CURIAE*, IN SUPPORT OF PETITION

The American Jewish Congress respectfully submits this brief, *amicus curiae*, in support of the Petition for Certiorari in this case.

The American Jewish Congress is an organization composed of thousands of Americans of Jewish faith and ancestry, organized in part "to help secure and maintain equality of opportunity for Jews everywhere, and to safeguard the civil, political, economic and religious rights of Jews everywhere". It established its Commission on Law and Social Action in 1945, in part

> To fight every manifestation of racism and to promote the civil and political equality of all minorities in America.

From time to time issues come before this Court involving the basic relationships between the many racial, religious and national groups which make up our multicultural nation. Even where the immediate case does not directly involve members of the Jewish faith, the decision of this Court establishes rules and patterns which have application to all minority groups.

Such an issue is presented here. The petition for certiorari in this case challenges the constitutionality of the California Alien Land Law on the ground that, as worded and as applied, it discriminates among persons within the State of California on the basis of race.

In support of our belief that the California Alien Land Law should no longer be given judicial approval, we submit to this Court our view of the basic evils which flow from this statute and the manner in which it perpetuates undemocratic legal, economic and social patterns.

Jurisdiction

The judgment of the California Supreme Court was entered October 31, 1946 (R. 121), and a petition for rehearing was denied on November 25, 1946 (R. 120). The petition for certiorari was filed on February 25, 1947, pursuant to § 237 of the Judicial Code.

The Statute Involved

The pertinent sections of the California Alien Land Law [1 Deering's General Laws, Act 261; Stats. 1921, p. lxxxiii, as amended by Stats. 1923, p. 1020, Stats. 1927, p. 880, Stats. 1943, chs. 1003, 1059 *] are set forth in Appendix to the petition for certiorari, pages 29-33.

* The statute was also amended by Stats. 1945, ch. 1136, after the commencement of this proceeding.

Statement of the Case

This is a proceeding brought by respondent in the California Superior Court, under § 7 of the Alien Land Law (Petition, p. 32), for the escheat of certain real property allegedly conveyed in violation of § 2 of that Law (Petition, p. 29) (R. 1-8).

Petitioner Fred Y. Oyama, a minor, is an American citizen (R. 59). Petitioner Kajiro Oyama, his father and guardian, is an alien of Japanese descent (R. 58-59).

The two conveyances here attacked took place, respectively, in 1934 (R. 59-61) and in 1937 (R. 61-63). In each case agricultural land was conveyed to petitioner Fred Y. Oyama (R. 60, 6, 61), the consideration having been paid by his father and mother (R. 60, 62).

Respondent's petition alleged that the conveyance to petitioner Fred Y. Oyama was a subterfuge and a fraud, and that his father and mother, ineligible aliens, were the true owners and users of the land, in violation of § 2 of the Act (R. 3-5, 6-7). Petitioners' answer alleged that the transactions were made in good faith as a gift to the son, and that the land has been occupied and used for his benefit (R. 54-55).

Petitioners filed a demurrer to the complaint, contending, *inter alia*, that the California Alien Land Law violated the Fourteenth Amendment (R. 18-19, 19-21, 22-33). The demurrer was overruled, the Superior Court holding itself bound by the decisions of this Court and of the California Supreme Court (R. 38, at 50-51). This contention was renewed at the trial and again rejected (R. 80).

After the trial (R. 72-104), the Superior Court found that the allegations of the petition were true, and that petitioner Kajiro Oyama, and not his son, petitioner Fred Y. Oyama, was the true owner of the land (R. 58-63). The Court found that the presumption of § 9(a) had not been rebutted (R. 103). The Court concluded that the land had escheated to the respondent (R. 63-64).

On appeal in the California Supreme Court, petitioners renewed their contention that the Alien Land Law violated the Fourteenth Amendment (R. 105, 109). The Court expressly passed upon this contention, and concluded that the statute was valid (R. 112-119).

Question Presented

The sole question discussed in this brief is whether the California Alien Land Law deprives the petitioners of the equal protection of the laws, in violation of the Fourteenth Amendment.

Summary of Argument

The California Alien Land Law in practice and by its terms discriminates against aliens and citizens of Japanese ancestry on racial grounds.

Aliens are entitled to the protection of the Fourteenth Amendment. A statute which discriminates on racial grounds is permitted by the Fourteenth Amendment only when required by "pressing public necessity". *Korematsu* v. *United States*, 323 U. S. 214, 216 (1944).

There is no "pressing public necessity" which requires the restrictive provisions of the California Alien Land Law. *Terrace* v. *Thompson*, 263 U. S. 197 (1923), and following cases, holding such laws to be valid, were incorrectly decided, and should be overruled. *Hirabayashi* v. *United States*, 320 U. S. 81 (1943), and the *Korematsu* case are distinguishable. The *Terrace* case is also inconsistent with earlier cases holding that a state may not deny to aliens the ordinary means of earning a livelihood, *Truax* v. *Raich*, 239 U. S. 33 (1915), and that a State may not regulate immigration. *Chy Lung* v. *Freeman*, 92 U. S. 275 (1875).

The California Land Law is also invalid because of its effect upon citizens of Japanese ancestry. It places discriminatory burdens on the enjoyment of ordinary family benefits by the citizen children of Japanese aliens. In addition, creation by a State of classes of aliens along racial lines has a divisive effect upon the corresponding citizen groups because of its establishment and encouragement of racial patterns in our legal, economic and social systems.

Certiorari should be granted in view of the importance of the questions raised.

ARGUMENT

POINT I

The California Alien Land Law discriminates against petitioners on racial grounds.

The purpose of the California Alien Land Law to discriminate against the Japanese has never been denied. This racist purpose is apparent from the standards adopted by the statute.

Section 2 of the California statute (Petition, p. 29) prohibits aliens other than those mentioned in § 1 from possessing, occupying, using, etc., land, except as provided by treaty. Since the aliens mentioned in § 1 are "all aliens eligible to citizenship under the laws of the United States", the class forbidden to hold land is composed of aliens ineligible to become citizens. The onerous guardianship provisions of § 4 and § 5, as well as the presumptions of § 9, are also keyed to this definition of ineligible aliens.

The laws of the United States establishing eligibility to citizenship discriminate against certain races, including the Japanese. Thus, the present form of 8 U. S. C. § 703 restricts eligibility to white persons, persons of African

nativity or descent, descendants of races indigenous to North and South America and India, Filipinos and Chinese. All other races are excluded from eligibility.

The racial discrimination inherent in our naturalization laws is recognized in the opinions of this Court. Thus, Mr. Justice Cardozo, in *Morrison* v. *California*, 291 U. S. 82 (1934), said at page 85:

> "But a person of the Japanese race, if not born a citizen, is ineligible to become a citizen, i.e., to be naturalized * * * [The naturalization statute] excludes the Chinese * * * the Japanese * * * the Hindus * * * the American Indians * * * and the Filipinos".*

See also *Terrace* v. *Thompson*, 263 U. S. 197, 220 (1923); *Ozawa* v. *United States*, 260 U. S. 178 (1922).

The California Alien Land Law thus adopts a racial prohibition as effectively as if it stated specifically that aliens of Japanese descent are ineligible to own land.

It is true that the naturalization laws also exclude certain aliens from eligibility to citizenship on moral or political grounds, e.g., 8 U. S. C. §§ 704-707, and presumably the California Alien Land Law also incorporates these disqualifications. This does not alter the fact that the federal law contains a racial discrimination against the Japanese which is adopted by the California law.

In the instant case, petitioner Kajiro Oyama was found to lack the power to own land solely because he was ineligible to become a citizen; that ineligibility arose solely because he was Japanese. Similarly petitioner Fred Oyama was found not to be the true owner of the land solely because he had failed to rebut the presumption of § 9, a presumption which arose only because his father was an alien, ineligible because Japanese.

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* Since 1934, all the classes mentioned by Mr. Justice Cardozo have been made eligible, save only the Japanese. Acts of Oct. 14, 1940, 54 Stat. 1140; Dec. 17, 1943, 57 Stat. 601; July 2, 1946, 60 Stat. 416.

The California Alien Land Law thus discriminates against petitioners solely because of race, whether consideration is given to the terms of the statute, or to its application in this case.

POINT II

The California Alien Land Law, in its discrimination against aliens of Japanese descent, violates the equal protection clause of the Fourteenth Amendment.

In this case the California courts have found that petitioner Kajiro Oyama was the true owner of the land in question, and that he was an ineligible alien. For purposes of the discussion in this point, we will assume the validity of this finding. We contend that California may not forbid an alien to own land merely because he is Japanese, and that the California Alien Land Law, which, as we have shown (*supra*, pp. 5-7), has this effect, is contrary to the mandate of the Fourteenth Amendment that no State "shall * * * deny to any person within its jurisdiction the equal protection of the laws".

A. Aliens are protected by the equal protection clause of the Fourteenth Amendment.

The "persons" protected by the equal protection clause of the Fourteenth Amendment include aliens as well as citizens. *Yick Wo* v. *Hopkins*, 118 U. S. 356, 369 (1886); *Truax* v. *Raich*, 239 U. S. 33, 39 (1915). Thus petitioner Kajiro Oyama, although an alien, is none the less entitled to invoke the protection of this clause.

B. Racial discrimination by a State, except where justified by "pressing public necessity," is contrary to the fundamental democratic principles upon which the Constitution is founded, and violates the Fourteenth Amendment.

This Court has often stated that racism is obnoxious to our fundamental democratic tenets, and that it cannot be countenanced under the Fourteenth Amendment, except under the most urgent conditions. In *Yick Wo* v. *Hopkins*, 118 U. S. 356 (1886), Mr. Justice Matthews said for a unanimous Court, at page 374.

> "No reason for [a discrimination against Chinese] is shown, and the conclusion cannot be resisted, that no reason for it exists except hostility to the race and nationality to which the petitioners belong, and which in the eyes of the law is not justified. The discrimination is, therefore, illegal, and the public administration which enforces it is a denial of the equal protection of the laws and a violation of the Fourteenth Amendment of the Constitution".

The severe standard by which racial legislation must be judged was recently emphasized by this Court in two cases arising out of the recent war. *Hirabayashi* v. *United States*, 320 U. S. 81 (1943); *Korematsu* v. *United States*, 323 U. S. 214 (1944).

In the *Hirabayashi* case, the Chief Justice stated for the Court, at 320 U. S., page 100:

> "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality. For that reason, legislative classification or discrimination based on race alone has often been held to be a denial of equal protection".

In the *Korematsu* case, Mr. Justice Black, in the opinion of the Court, again referred to the narrow scope for racial legislation. The Court stated at page 216:

> "It should be noted, to begin with, that all legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny. Pressing public necessity may sometimes justify the existence of such restrictions; racial antagonism never can."

The Supreme Court of California, in the instant case, failed to give sufficient weight to this test. That Court concluded that the California Alien Land Law was valid if the Legislature had a rational basis for adopting it, rather than only if there was a clear and present danger to the State requiring the racial discrimination (R. 116-117).

The lower standard adopted by the California Court is utterly inconsistent with the authoritative rulings of this Court, to which reference has just been made. It is not enough that there may be a "rational basis" for excluding Japanese from owning land in California; in the words of the *Korematsu* opinion, there must be a "Pressing public necessity", before the racial discrimination may be justified.

C. The California Alien Land Law is not supported by a "pressing public necessity", and is therefore invalid under the Fourteenth Amendment. The cases in this Court upholding this statute should be overruled.

We have shown that the California Alien Land Law discriminates against petitioner Kajiro Oyama because of his race, and that such a statute is valid only when supported by a pressing public necessity. The California statute does not satisfy that strict standard, and therefore must fall.

It is true that the California Alien Land Law, along with a comparable statute of the State of Washington, was upheld in several cases decided by this Court. *Terrace* v. *Thompson*, 263 U. S. 197 (1923) (Washington Law); *Porterfield* v. *Webb*, 263 U. S. 225 (1923); *Webb* v. *O'Brien*, 263 U. S. 313 (1923); *Frick* v. *Webb*, 263 U. S. 326 (1923);

Cockrill v. *California*, 268 U. S. 258 (1925); cf. *Morrison* v. *California*, 291 U. S. 82 (1934). We believe that these cases were erroneously decided, and should be overruled.

Terrace v. *Thompson*, 263 U. S. 197 (1923), was the first case in this series, and the foundation stone upon which the others rested. The other cases were decided either upon the authority of the *Terrace* opinion, or for similar reasons. It is therefore necessary to discuss here only the *Terrace* case.

The Washington statute in the *Terrace* case prohibited the ownership of land by aliens who had not in good faith declared their intention of becoming citizens. (The statute was thus broader than California's, which limits its prohibition to aliens ineligible to become citizens.) The contention was made that this statute violated equal protection, since it contained an unjust discrimination against aliens ineligible to become citizens, who therefore could not declare their intention to become citizens.

The statute was upheld in this Court upon essentially two grounds:

> 1. "Two classes of aliens inevitably result from the naturalization laws,—those who may and those who may not become citizens. The rule established by Congress on this subject, in and of itself, furnishes a reasonable basis for classification in a state law withholding from aliens the privilege of land ownership as defined in the act." 263 U. S., p. 220;
>
> 2. "'It is obvious that one who is not a citizen and cannot become one lacks an interest in, and the power to effectually work for the welfare of, the state, and, so lacking, the state may rightfully deny him the right to own and lease real estate within its boundaries. If one incapable of citizenship may lease or own real estate, it is within the realm of possibility that every foot of land within the state might pass to the ownership or possession of non-citizens.'" 263 U. S., pp. 220-221.

We think that each of these grounds was faulty, and that the opinion is therefore without support in reason.

1. We shall not now argue, though we believe it to be true, that the Congressional discrimination is not a permissible one. We think that the power of Congress under Article I, Section 8 of the Constitution "To establish an uniform Rule of Naturalization" is limited by the due process clause of the Fifth Amendment, and that a discrimination on racial grounds cannot be justified. We submit, however, that the Congressional power, if it exists, to discriminate against the Japanese by declaring them ineligible to become citizens, does not justify a state discrimination in a different context.

The decisions of this Court upholding discriminatory naturalization laws are based upon the supposition that Congress' power in this field is plenary and without limitation. As this Court said in the *Terrace* opinion, itself, see 263 U. S., page 220: "Congress is not trammeled, and it may grant or withhold the privilege of naturalization upon any grounds or without any reason, as it sees fit."

The power of the States to regulate the ownership and occupancy of land, on the other hand, is not an untrammelled one which may be exercised "upon any grounds or without any reason". See, for instance, *Buchanan* v. *Warley*, 245 U. S. 60 (1917), where this Court held unconstitutional a state statute limiting the right of Negroes to own land. See also *Harmon* v. *Tyler*, 273 U. S. 668 (1927); *City of Richmond* v. *Deans*, 281 U. S. 704 (1930), both to the same effect.

The exercise of an *untrammelled* power in a discriminatory way cannot "in and of itself" justify the exercise of a *limited* power in the same discriminatory fashion, particularly where the limitation—here the Fourteenth Amendment—is designed to proscribe that type of discrimination. Indeed, if this aspect of the *Terrace* opinion were sound, similar reasoning could be used to justify *any* discrimina-

tion by a state against aliens ineligible to become citizens. They could be effectively excluded from the state entirely.

In sum, the Congressional discrimination against the Japanese creates no "pressing public necessity" sufficient to justify such *State* legislation as the Alien Land Law.

2. The second ground of the *Terrace* opinion was also fallacious: that ineligible aliens lacked an interest in the State, as well as the power to work for its welfare.

The California statute could not have been based upon such an assumed "evil". Such a lack of interest, if any, would not be restricted to ineligible aliens, but could be said to exist as to *all* aliens. But this assumed lack of interest is not in accord with the facts. Japanese aliens perhaps may not vote, but they still have the right of free speech in civic affairs, the privilege of paying taxes, the privilege of serving in the Army and Navy, and other rights and privileges by which a citizen works effectually "for the welfare of the state". Their children are citizens of the United States; surely their nurture and support are reasons enough for wholehearted interest in the State.

Certainly it cannot be said that this speculative danger creates a "pressing public necessity", which alone permits a State to discriminate on racial grounds. Even if a racial group of aliens lacks the same incentive to work for the welfare of the State, as other groups, it does not necessarily follow that there is an urgent danger to the State in permitting that racial class to own agricultural lands. The lack of such a pressing public necessity is clearly shown by contrasting the *Terrace* case with *Hirabayashi* v. *United States*, 320 U. S. 81 (1943), and *Korematsu* v. *United States*, 323 U. S. 214 (1944).

In both the *Hirabayashi* and *Korematsu* cases, this Court upheld racial discriminations by the Federal Government. A curfew in the one case and an exclusion from a certain area in the other were applicable only to those of Japanese descent. But in each case the discrimination was found valid only after the most careful study of the facts which were found to show an urgent need for the regulations.

We were engaged in a war threatening our existence and were in danger of invasion, espionage and sabotage. It was found that the military authorities could reasonably believe that the military necessity required the discrimination in order to ward off these dangers. Even then three Justices of this Court thought in the *Korematsu* case that the discrimination had reached beyond the bounds permitted by the Constitution.

In the *Terrace* case and here there is no such urgency. There is no war or other public emergency facing the State. Indeed, there is utterly no support for a conclusion that ownership of agricultural lands by Japanese aliens will undermine the safety of the State of California.

The *Hirabayashi* and *Korematsu* cases represent, in our view, a return, after a departure in the *Terrace* case, to the strict rule laid down in earlier decisions of this Court regarding State restraints on aliens. Thus, it was held in *Truax* v. *Raich*, 239 U. S. 33 (1915), that a State may not

> "deny to lawful inhabitants, because of their race or nationality, the ordinary means of earning a livelihood. It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the [Fourteenth] Amendment to secure" (p. 41).

See also *Yick Wo* v. *Hopkins*, 118 U. S. 356 (1886).

The effect of the California Alien Land Law can be the virtual exclusion of ineligible aliens from a common occupation: the tilling of the soil. For, as held by the California Supreme Court in this case, the scope of the law

> "is much broader than the acquisition and ownership of land; it includes the right to 'acquire, possess, enjoy, *use, cultivate*, occupy, transfer, transmit and inherit real property * * * [or to] * * * have in whole or in

part the beneficial use thereof" (R. 111, italics supplied).*

A concomitant result of this virtual prohibition upon ineligible aliens, i.e., Japanese, from following their agricultural occupation is, in effect, their exclusion from the State. If they cannot farm in California, they must perforce go elsewhere. Cf. *Truax* v. *Raich*, 239 U. S. 33 (1915), at page 42. Similarly, ineligible aliens, i.e., Japanese, may be deterred from coming to California, in view of the impossibility of following their occupation there. Indeed these purposes of the California Alien Land Law were admitted by the Supreme Court of California in *Estate of Yano*, 188 Cal. 645, 658, 206 Pac. 995, 1001 (1922):

> "The object sought to be attained by these statutory provisions, that is, *to discourage the coming of Japanese into this State*, may be a proper one * * *." (Italics added.)

This regulation is thus tantamount to a control of immigration, a power vested exclusively in the Federal Government. *Truax* v. *Raich*, 239 U. S. 33, 42 (1915); *Fong Yue Ting* v. *United States*, 149 U. S. 698, 713 (1893), and not in the States, *Chy Lung* v. *Freeman*, 92 U. S. 275 (1875).

We urge this Court that it should adhere strictly in this case to the rule that only "pressing public necessity" can justify racial discrimination. The California Alien

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* In *Webb* v. *O'Brien*, 263 U. S. 313 (1923), this Court held that an earlier form of the California Land Law, which prohibited to ineligible aliens only the power to "acquire, possess, enjoy and transfer real property" (see 263 U. S., p. 319, fn. 1), prevented Japanese aliens from holding land under a share cropping agreement. *Truax* v. *Raich* was distinguished, at page 324, on the ground that the California statute did not "deny the ordinary means of livelihood". The subsequent extension of the California statute, however, to prevent ineligible aliens from using, cultivating or having the beneficial use of agricultural land makes much more comprehensive the bar to a Japanese farmer from following his occupation. It is difficult to imagine any agricultural laborer who does not "cultivate * * * real property".

Land Law, which is racial legislation of the clearest kind, can claim no such justification. The decisions of this Court upholding such laws are entirely inconsistent with the basic philosophy which has otherwise governed its interpretation of the Fourteenth Amendment to the Constitution since the landmark decisions in the *Yick Wo* and *Truax* cases. They should be overruled.

POINT III

The California Alien Land Law discriminates against citizens of Japanese ancestry and thereby denies them the equal protection of the laws, in violation of the Fourteenth Amendment.

The petition for certiorari (pp. 8-17) demonstrates beyond cavil that §§ 4, 5 and 9 of the California Alien Land Law place the citizen children of aliens ineligible to citizenship in a class apart from citizen children of citizens or of eligible aliens. Under § 9 such a citizen child faces substantial obstacles in proving that he is the owner of land paid for by his parents, obstacles which other citizen children do not face. Indeed it may be said that the California Legislature might as well have provided simply that an ineligible alien could not give money to his citizen children for the purchase of land. Under §§ 4 and 5 onerous burdens are discriminatorily placed on the guardianship of the property of such children, *even where the guardian is a white citizen.*

The Court below held that these provisions deprived the citizen Fred Y. Oyama of no constitutional rights even though they put him off the land his father bought for him (R. 117). It rested this holding on the specious ground that "he acquired nothing by the conveyance and the Alien Land Law took nothing from him" (*id.*). The least that can be said of this argument is that it is highly unrealistic. It ignores the fact that a substantial and intended effect

of this law is to deprive citizen children of ineligible aliens of the ordinary benefits of the family relationship which other citizen children enjoy. It creates formidable obstacles, for example, to their being set up in farming, one of the "common occupations of the community" (*Truax* v. *Raich*, 239 U. S. 33, 41), by the accumulated savings of their parents. It creates discriminatory and burdensome regulations on guardianships.

These restrictions, however, are but specific illustrations of the evil effect of such legislation. The basic evil is the official sanction which it gives to racial theories and practices. The Fourteenth Amendment forbids State action which creates classes of citizens on the basis of race. Legislation of this type does just that, even though it appears to affect directly only aliens. The dichotomy created by the State between the members and non-members of a given race, even though limited to aliens, has inevitable repercussions among the corresponding groups of citizens. The split in the alien border of the fabric of the population cannot be kept from spreading to the body of the cloth.

It must be remembered that the implications of this case go far beyond the restrictions on land ownership immediately involved. Approval of those restrictions would mean approval also of existing legislation excluding Japanese aliens from fishing and other fields of endeavor and such other restrictive legislation as the State sees fit to adopt in the future. Such restrictions on the older members of the Japanese group establish economic patterns which are not readily disrupted by the younger citizen members of the group. They perpetuate distinctions which should be eradicated, enforce racial patterns, and prevent the elimination of barriers which cannot be allowed to endure in our multicultural society.

During the recent war, the Federal Government was forced to take steps which unfortunately had much the same effect: the imposition of curfew regulations and,

subsequently, the removal of all persons of Japanese descent from West Coast areas. This Court approved these steps on the ground that they were

> "Necessary to meet the threat of sabotage and espionage which would substantially affect the war effort and which might reasonably be expected to aid a threatened enemy invasion" (*Hirabayashi* case, 320 U. S., at p. 95).

It held that they were properly applied to an entire racial group, citizen and alien alike, because

> "* * * social, economic and political conditions which have prevailed since the close of the last century, when the Japanese began to come to this country in substantial numbers, have intensified their solidarity and have in large measure prevented their assimilation as an integral part of the white population" (*id.* at p. 96).

It cited in this connection the California Land Law and other restrictive legislation and customs (*id.* at p. 97, note 4). It went on to note:

> "The restrictions, both practical and legal, affecting the privileges and opportunities afforded to persons of Japanese extraction residing in the United States, have been sources of irritation and may well have tended to increase their isolation, and in many instances their attachment to Japan and its institutions" (*id.* at p. 98).

The very fact that such steps were necessitated during the emergency of war increases the importance of acting during the time of peace to eliminate the evils which prompted them. The only hope that they may never again become necessary lies in the encouragement of the process whereby all groups within the United States become a well integrated part of the population. The classic American approach is to open all occupations to all, not to drive one racial, religious or national group out of some

occupations, thereby increasing their concentration in others. This process will be inevitably retarded by legislation which reinforces distinctions between races by creating legal, social and economic patterns in which such distinctions are decisive.

POINT IV

Certiorari should be granted to review the decision of the Court below.

The decision of the Court below is in conflict with the decisions of this Court in the *Hirabayashi* and *Korematsu* cases since, as we have shown, it fails to apply the "pressing public necessity" test to this legislation.

In addition this case raises a question of general public importance. There can be no issue more important than the validity of the action of a state in creating and perpetuating racial discriminations which are "odious to a free people whose institutions are founded upon the doctrine of equality." *Hirabayashi* case, 320 U. S. at page 100.

On these grounds the petition for certiorari should be granted and, upon the argument, the judgment below should be reversed.

Respectfully submitted,

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